R. R. Co., 135 N. E. 682. The payment of fare is not necessary to create the relation of common carrier and passenger. *Rose v. Railroad*, 39 Ia. 246.

CARRIERS—INJURY TO FREIGHT—EVIDENCE.—DUNCAN V. GREAT NORTHERN RY. CO., 118 N. W. 826 (N. D.).—*Held*, on proof of delivery of the property to the carrier in sound condition, and of its redelivery by the same carrier at end of the route in damaged condition, or a failure to redeliver it, a sufficient case is made to sustain a recovery for the damages or loss by the shipper.

It is well settled that at common law a common carrier is an insurer of the goods intrusted to him and is responsible for all losses to the same, save such as are occasioned by act of God or the public enemy. *Angell on Carriers*, § 67, 148, 153; *N. J. Steam Nav. Co. v. Merchants' Bank*, 6 Howard 381. The right of a common carrier to limit his responsibility by a special contract has long been settled law in England. *Carriers' Act*, 1830. And in this country it is settled by the great preponderance of authority that such carrier may avoid all liability except from its own negligence, by a special contract. *York v. Central R. R.*, 6 Allen 489. The doctrine that he may avoid all but *gross* negligence is repudiated in *Christenson v. American Express Co.*, 15 Minn. 208, 270. In case of such special contract, the burden of proof is still on the carrier to show not only that the cause of loss was within such exception but that there was no negligence on his part. *2 Greenl. Ev.*, 219. The liability for live stock is the same as for other freight except for loss or injury resulting from the nature and propensities of the animals themselves. *Cooley on Torts*, 3rd Ed., 1351.

CONTRACTS—LEGALITY—RELIEF—PART PERFORMANCE.—SAUERHERING V. RUEPING, 119 N. W. 184 (WIS.).—*Held*, that where there is part performance of an illegal contract, the court will not aid either party thereto. Marshall and Barnes, J. J., *dissenting*.

In illegal contracts, partly performed, the courts make a distinction between those that are merely *malum prohibitum*, and those *malum in se*, and hold that in the former class money paid thereon can be recovered. *Pratt v. Short*, 79 N. Y. 437; *Knowlton v. Spring Co.*, Fed. Case No. 7903 (N. Y.). So, though the contract is void, money which has been paid on a lottery ticket may be recovered. *Wardell v. Waite*, 7 Johns. (N. Y.) 434. And, even though wagers are void by statute, money deposited with a stakeholder may be recovered by the loser even after the event has taken place; *Wheeler v. Spenser*, 15 Conn. 28; *Lewis v. Burton*, 74 Ala. 317; and the same rule applies where the money on a fully executed illegal contract remains in the hands of a mere depository. *Woodworth v. Bennett*, 43 N. Y. 273. Notwithstanding the illegal contract, the complaining party can recover if he can establish his case without relying upon the illegality of the transaction. *Phalen v. Clark*, 19 Conn. 421. And it seems to be settled that after a contract, confessedly against public policy, has been carried out and money contributed by one partner, the

other partner in whose hands the profits are, cannot refuse to account for and divide them on the grounds of the illegal character of the original contract. *Brooks v. Martin,* 69 U. S. 70; *Central Trust Co. v. Ohio Cent. Ry.,* 23 Fed. 306. The general principle, however, as to contracts *malum in se* is that they are against public policy and the courts will not aid either party to escape the consequences. *Goodrich v. Tenny,* 144 Ill. 422; *Oliver v. Gilman,* 52 Fed. 562.

CONTRACTS—SEVERABLE CONTRACTS.—JOHNSON ET AL. V. FEHSEFEDDT, 118 N. W. 797 (MINN.).—*Held,* that the mere fact that a price has been affixed to each bushel of a crop contracted to be threshed, is not sufficient to make it severable.

It is the universal rule that the intention of the parties determines whether a contract is entire or severable. *Shinn et al. v. Bodine,* 60 Pa. St. 182. And this intention must be discovered by considering the language employed and the subject matter of the contract. *Southwell v. Beezley,* 5 Ore. 458. The consideration to be paid is a means of determining this question. *Clay Commercial Tel. Co. v. Root,* 4 Atl. 828 (Pa.); but it is frequently a question of fact. *Minget et al. v. Corbin,* 142 N. Y. 334.

CRIMINAL LAW—CONFESSIONS—ADMISSIBILITY.—PEOPLE V. OWEN, 118 N. W. 590 (MICH.).—Where one was arrested after having attempted to commit murder, and without expressing any desire to make a statement, was put under oath by a notary and examined by the chief detective in the presence of a police commissioner, two police officers, and the official stenographer of the police department, and in the course of such examination made answers which amounted to a confession, *held,* that such confession was voluntary and admissible in evidence. Moore and McAlvay, J. J., *dissenting.*

The simple fact that a confession is made to a police officer does not render it inadmissible; *People v. Rogers,* 18 N. Y. 9; even if made in reply to questions, in the absence of any inducements of hope or fear. *Spicer v. State,* 69 Ala. 159. But it is a well settled rule that an extra judicial confession is not admissible in evidence against the accused unless it has been freely and voluntarily made. *Wilson v. U. S.,* 162 U. S. 622. And this rule applies when the prisoner has been influenced by any inducement of hope or fear, however slight, for the reason that the law cannot measure the force of the influence used or decide upon its effect on the mind of the prisoner. *People v. Clark,* 105 Mich. 169. So where a prisoner testifies he must not be sworn, for if to the embarrassments and perplexities of the situation are added the danger of perjury and the dread of additional penalties, the confession can scarcely be regarded as voluntary, but on the contrary it seem to be made under the very influences which the law is particularly solicitious to avoid. *Greenleaf on Evidence,* § 225; *State v. Garvey,* 25 La. Ann. 191.

CROPS—DEED OF LAND—ORAL RESERVATION OF GROWING CROPS FOR THIRD PERSON.—BECK V. MCLANE, 114 N. Y. SUPP. 44.—After the tenant